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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ

Writ Petition No. 2956 of 2006

PETITIONERS
Plaintiffs

1. Suresh Kumar Dubey
S/o. Late R.B. Dubey, Aged about 53
yrs. R/o. Anand Nagar, Tah. & Distt.
Raipur (C.G.)
2. Mahesh Kumar Dubey
S/o. Late R.B Dubey, Aged about 51
yrs. R/o. Andnd Nagar, Tah & Distt.
Raipur. (C.G.)

VERSUS

RESPONDENTS
Defendants

1. Ku. Nidhi Sharma, D/o. Shiv Narayan
Sharma, Aged about 31 yrs. R/o.
Infront of Rest House, Irrigation
Department, Civil Lines, Raipur Tah. &
Distt. Raipur (C.G.)
2. Janak Singh Thakur S/o. Thakur
Singh Thakur, Aged about 41 yrs, R/o.
Village Sarona, P.O. Pt. Ravishankar
University, Raipur Tah. & Distt. Raipur
(C.G.)
3. Ramjee Singh Thakur S/o. Late
Thakur Singh Thakur Aged about 54
yrs.
4. Banshi Singh Thakur
S/o. Late Thakur Singh Thakur Aged
about 41 yrs.
5. Smt. Gulaba Bai, Aged about 76
years.

Respondents 3, 4 & 5 R/o. Village
Sarona, P.O. Pt. Ravishankar
University, Raipur Tah. & Distt. Raipur
(C.G.) through their General Power of
attorney Holder, Janak Singh S/o.
Late Thakur Singh Thakur, R/o.
Village Sarona, P.O. Pt. Ravishankar
University, Raiur Tah. & Distt. Raipur
(C.G.)

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6. State of Chhattisgarh, through Collector, Raipur (C.G.)
7. Ratan Chand Jain S/o. Mangi Lal Jain, Aged about 46 yrs. R/o. Taigore Nagar, Raipur (C.G.)
8. Prakash Chand Golcha, S/o. Late Milap Chand Golcha, Aged 46 years, R/o. Bairan Bazar, Raipur (C.G.)
9. Sandeep Verma, S/o. D.P. Verma Aged about 38 years, R/o. Navjeevan Society, Raipur (C.G.)
10. Rajesh Parakh, S/o. Sampat Laljee Parakh, Aged about 32 years, R/o. Shailendra Nagar, Raipur (C.G.)

Present: Shri Manoj Paranjape, learned counsel for the petitioners.
Shri Yashwant, learned Govt. Advocate for the State of Chhattisgarh.
Shri Ajit Singh, learned counsel for respondents 7 to 10.

ORAL ORDER
(Passed on 4th September, 2006)

The petitioners who are plaintiffs feeling aggrieved by the order of the Court below dated 29-3-2006 whereby and whereunder the opportunity of the petitioners to produce evidence has been denied.

(2) The case of the plaintiffs, in brief, is that on 29-3-2006 the case was fixed for plaintiffs' evidence. When the case was called on that day in the first round, the plaintiffs and their counsel were not present before the Court inasmuch as at that time they were executing an application and affidavit to be filed before the Notary. When they came to know about the termination of the opportunity, the same day at about 4.35 PM, the plaintiffs through their counsel made an application and submitted the same in the open Court for recalling the order already made. That application was summarily rejected by

the Court below on the ground that the Advocate appearing for the other side had already left the Court and also on the ground that the cause shown for absence when the case was called in the first round is not satisfactory. Hence, this writ petition under Article 227 of the Constitution of India.

(3) Having heard learned counsel for the parties, I am of the considered opinion that the learned trial Judge is not justified in rejecting the application for the reasons stated by him. In the first instance, merely because at 4.35 PM when the application was moved, learned counsel appearing for the other side was not present and had left the Court premises, that could not be a valid ground to reject the application. There was no difficulty for the learned trial Judge to direct the plaintiffs' counsel to serve the copies on the learned counsel appearing for the other side and hear that application on merit at a later stage. Secondly, the cause shown by the plaintiffs in their application not to remain before the Court when the case was called in the first round, is not seriously disputed. The case of the plaintiffs is that at the relevant point of time they were held up before the Public Notary for executing an application and affidavit to be filed in the Court. It is not as if the plaintiffs moved the application after a lapse of considerable time-gap after 29-3-2006. The same day they moved an application for recalling the order already made the same day. I find that there is failure of justice. The writ petition is allowed, the impugned order is set aside and the application of the plaintiffs to recall the order is allowed. Learned trial Judge is directed to give opportunity to petitioners-plaintiffs to adduce evidence and proceed further in accordance with law. No costs.

Sd/-
Chief Justice